

AU Docket No. 17-351



December 11, 2013

ACCEPTED/FILED

JAN 25 2018

Federal Communications Commission  
Office of the Secretary

Repp Law Firm  
1629 K Street, N.W., Suite 300  
Washington, D.C. 20006-1631  
T 202.656.1619  
F 202.400.3737  
[marissa@repplawfirm.com](mailto:marissa@repplawfirm.com)  
[www.repplawfirm.com](http://www.repplawfirm.com)

Via e-mail: [auction83@fcc.gov](mailto:auction83@fcc.gov)

Margaret W. Wiener, Esq.  
Chief, Auctions & Spectrum Access Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

**Re: Auction No. 83  
Indirect Subsidiaries of Clear Channel Communications, Inc.  
Request for Waiver of 47 C.F.R. Section 1.2105(b)(2)**

**Motion to Dismiss Opposition of Monticello Media LLC**

Dear Ms. Wiener:

This submission is to request the dismissal of the opposition submitted on October 17, 2013 (the "Opposition") by Monticello Media LLC ("Monticello") in regard to the August 14, 2013 request for waiver of 47 C.F.R. Section 1.2105(b)(2) (the "Waiver Request") submitted on behalf of the indirect subsidiaries (the "CC Applicants") of Clear Channel Communications, Inc. ("CCCI"). The Opposition should be dismissed as Monticello has no standing in this proceeding.

As explained to the Media Bureau by Clear Channel Broadcasting Licenses, Inc. ("CCBL"),<sup>1</sup> Monticello is a former contracting party frustrated by CCBL's refusal to accede to Monticello's novel construction of the parties' 2007 Asset Purchase Agreement that would, in Monticello's view, require CCBL to assign to Monticello its rights to the pending application for a new FM translator station at Charlottesville, Virginia.<sup>2</sup> Surely, if CCBL had acquiesced to Monticello's contractual demand, Monticello would have welcomed an FCC grant of the

<sup>1</sup> See CCBL Opposition to Petition to Deny, Sep. 23, 2013, File No. BNPFT-20130821ABF ("CCBL Opposition to Petition to Deny") (copy attached).

<sup>2</sup> FCC Facility ID No. 148345, Application File No. BNPFT-20130821ABF (the "Charlottesville Application").

Charlottesville Application (which is otherwise unopposed), so that it could be assigned to Monticello per its demand. But, after being rebuffed by CCBL, it would appear that Monticello does not want any party but it to have the ability to construct a new FM translator to serve Charlottesville; hence the filing by Monticello of a Petition to Deny against the Charlottesville Application.

In its Petition to Deny the Charlottesville Application, Monticello, without having yet seen the Waiver Request, forewarned that it would oppose the Waiver Request,<sup>3</sup> an evident attempt to raise the stakes for CCBL's continued resistance to Monticello's contractual demand. CCBL noted in the Charlottesville proceeding that such an opposition would be inappropriate as the Waiver Request seeks a waiver of Section 1.2105(b)(2) only for the Clear Channel subsidiary FM translator applications going to auction and confirmed that the Waiver Request does not seek a waiver of Section 1.2105(b)(2) for singleton applications such as the Charlottesville Application.<sup>4</sup>

Nevertheless, Monticello followed through on its scorched-earth strategy and filed its Opposition to the Waiver Request, notwithstanding that by its very terms, the Waiver Request is limited to pending short form applications of the CC Applicants that are mutually exclusive, and does not incorporate singleton applications such as the Charlottesville Application. As Monticello is not known to be, and does not purport to be, a mutually-exclusive applicant to any of the CC Applicants' mutually-exclusive 2003 window FM translator applications, it simply has no standing in regard to the Waiver Request. Consequently, the Monticello Opposition should be dismissed.

Even if the Monticello Opposition was considered in this proceeding, the Opposition essentially amounts to an unfounded "open the floodgates" scare tactic. By failing to distinguish a transfer in control at the holding company level of multiple licensees implementing the restructuring of a public company which impacted over one thousand broadcast station authorizations from a commonplace assignment from one licensee to another, Monticello attempts to cast the 2008 CCCI restructuring as an everyday occurrence. In suggesting that the 2008 CCCI restructuring was not a unique and isolated event, Monticello would have the Wireless Telecommunications Bureau fear a deluge of like waiver requests. However, the Waiver Request is not an attempt to assign a single, or even a handful, of applications from one applicant to another. Instead, grant of the Waiver Request would eliminate an administrative penalty for a multi-station transfer of control at the holding-company level of a magnitude that would rarely, if ever, be replicated during such a drawn-out window period. In this unique circumstance, no applicant is attempting to assign its standing in the auction to a third party applicant. That is, unlike the precedent cited by Monticello, where new third party entities

---

<sup>3</sup> See Monticello Petition to Deny at n.4, Sep. 11, 2013, File No. BNPFT-20130821ABF.

<sup>4</sup> See CCBL Opposition to Petition to Deny at n.7.

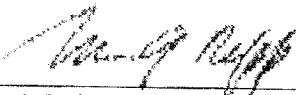
Margaret W. Wiener, Esq.  
Federal Communications Commission  
Page 3

desired to step into the assignor's shoes, the CC Applicants here will be the auction participants. The "perfect storm" of unique circumstances and history of Commission waiver of policies to accommodate multi-station transfers detailed by CCCI in its Waiver Request more than justifies grant of the Waiver Request. The Wireless Telecommunications Bureau, with its mission to promote the public interest, has a compelling record before it in support of the grant of the Waiver Request. Moreover, prompt action on the Waiver Request would avoid rewarding Monticello's attempt to gain contractual leverage over CCBL. The CC Applicants respectfully request that the Bureau grant the Waiver Request and thereby confirm that the CC Applicants may amend their respective Form 175 applications to reflect the 2008 holding company transfer of control and to proceed to participate in Auction No. 83.

Respectfully submitted,

REPP LAW FIRM

By:

  
Marissa G. Repp

Attorney for Clear Channel  
Communications, Inc.

cc: William W. Huber, Associate Chief, Legal and Policy, Wireless Telecommunications  
Bureau (via e-mail)  
Peter H. Doyle, Chief, Audio Division, Media Bureau (via e-mail)  
Lisa Scanlan, Audio Division, Media Bureau (via e-mail)  
Thomas Nessinger, Audio Division, Media Bureau (via e-mail)  
Lewis J. Paper, Esq. and Lauren Lynch Flick, Esq. (via First Class Mail)